

**O/0770/25**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00004017754**

**BY META TRADERZ LTD**

**TO REGISTER THE TRADE MARK:**

**ERA NATURAL**

**IN CLASS 24**

**AND IN THE MATTER OF OPPOSITION THERETO**

**UNDER NO. 448489**

**BY SHENZHENSHI SHANGPINGJIA XINXIJI SHU YOUXIANGONGSI**

## **Background and pleadings**

1. META TRADERZ LTD (“**the applicant**”) applied to register the trade mark **Era Natural** in the UK on 23 February 2024. It was accepted and published in the Trade Marks Journal on 10 May 2024 in respect of the following goods:

Class 24: Cheese cloth; Cloth; Woolen cloth; Silk cloth; Linen cloth; Vinyl cloth; Cloth flags; Prayer cloth.

2. On 9 July 2024, the applicant’s mark was opposed by shenzhenshi shangpingjia xinxiyishu youxiangongsi (“**the opponent**”). The opposition is based on section 5(4)(a) of the Trade Marks Act 1994 (“**the Act**”). The opponent claims unregistered rights in the sign “Era Natural” (“**the opponent’s sign**”), based on use throughout the UK since May 2020 in respect of the following goods:

Strainers for household purposes; tea strainers; piping bags; pastry bags; decorating bags for confectioners; isothermic bags; tea bag rests; cooking mesh bags; cheesecloth bags for use in cooking; cooking mesh bags; linen cloth.

3. The opponent claims that as a result of the use of its earlier sign, it has acquired a considerable amount of goodwill in the UK and that use of the applicant’s mark would be a misrepresentation to the public and result in damage to the aforementioned goodwill.

4. The applicant filed a counterstatement denying the claims made.

5. The opponent is represented by Pawel Wowra (of BIP Solutions). The applicant has no professional legal representation. Only the opponent filed evidence in these proceedings. Neither party filed submissions during the evidence rounds or subsequently, and no hearing was requested. This decision is taken following a careful perusal of the papers.

## **RELEVANCE OF EU LAW**

6. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the

European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

## **EVIDENCE**

7. The opponent's evidence came in the form of the witness statement of Su Hongyan dated 14 November 2024. Mr Su states that he is the legal representative of the opponent. His witness statement was accompanied by 4 exhibits, being those labelled SH1 to SH4. The purpose of the filed evidence is to support the opponent's claim to benefit from a protectable level of goodwill.

8. I have taken all filed documents into account and will refer to them to the extent that I deem necessary in setting out my decision.

## **DECISION**

9. Section 5(4)(a) states:

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa) .....

(b).....

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

10. Subsection (4A) of Section 5 states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of

application for registration of the trade mark or date of the priority claimed for that application.”

11. Section 5A states:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

12. The three elements which the opponent must show are well established. In *Discount Outlet v Feel Good UK* [2017] EWHC 1400 (IPEC), Her Honour Judge Melissa Clarke, sitting as a Deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56 In relation to deception, the court must assess whether “*a substantial number*” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

### **Relevant date**

13. Whether there has been passing off must be judged at a particular point (or points) in time. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-22 410-11, Mr Daniel Alexander QC, sitting as the Appointed Person, considered the relevant date for the purposes of s.5(4)(a) of the Act and stated as follows:

“43. In *SWORDERS TM O-212-06* Mr Allan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows: ‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’”

14. The applicant’s mark does not have a priority date, and there is no claim or evidence before me of any earlier use by the applicant of the contested trade mark that could be considered the start of the behaviour complained about. As such, the relevant date for the present proceedings is the filing date of the applicant’s mark, being 23 February 2024.

### **Goodwill**

15. The concept of goodwill was explained in *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217 at 223:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

16. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent’s reputation extends

to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark* [1969] R.P.C. 472). Thus the evidence will include evidence from the trade as to reputation; 54 evidence as to the manner in which the goods are traded or the services supplied; and so on.

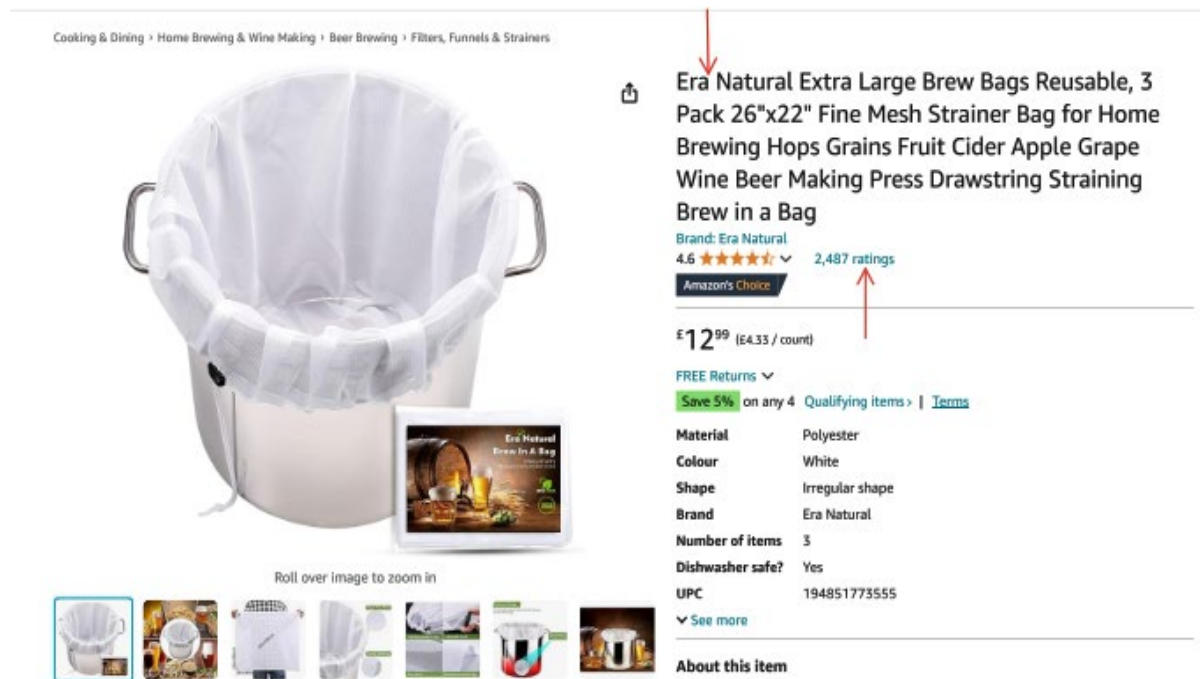
28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

17. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

18. Su Hongyan states that he “solely created the name of the then-unregistered mark, which was utilised in the market” (the UK) since May 2020 for “cloth items” sold exclusively through the Amazon.co.uk platform. Later in his witness statement he clarifies that “only one type of product has been sold”.

19. Exhibit SH1 is a screenshot of an Amazon listing for a polyester fine mesh straining bag used for cooking. The exhibit confirms that the mesh bag was first available in May 2020. For illustrative purposes, the product listed is shown as follows:



20. Su Hongyan states that as of 3 June 2024, 2,810 orders had been placed for the extra large reusable strainer bag. Since this period extends 3 months beyond the relevant date, the total number of orders before the relevant date – i.e. in the period of just under 4 years from May 2020 to 23 February 2024 - is presumably fewer than 2,810.

21. The evidence contains no invoices to demonstrate sales of the strainer bag to customers in the UK. Instead, Exhibit SH2 is an extract from a business report generated from the Amazon seller account, which shows 11 orders made for the strainer bag through the Amazon UK website in the few days from 1 – 5 May 2022, where the Billing Country/Region is given as “GB”. These five days are from midway in the 4-year period of claimed use. The evidence does not explicitly state whether these 11 orders are total sales in the UK or merely an illustrative snapshot, though the latter may be a reasonable inference. The Exhibit SH2 business report also shows

that in the 2-year period from 9 November 2022 to 4 November 2024, 2,240 orders of this product were placed. The total gross revenue from sales of the strainer in that 2-year period is shown in the report to be £41,120, which includes over £5k of business-to-business sales.

22. The witness states that since 1 April 2021, they have spent over £1,000 on advertising campaigns. In support of this, Exhibit SH3 is a screenshot of the opponent's "campaign manager" via Amazon which confirms that £1,012 has been spent on sponsored Amazon ads between 1 April 2021 and 1 October 2024 (again extending beyond the relevant date). The exhibit appears to confirm Mr Su's statement that "these campaigns alone generated over £6000 in revenue". Whilst I note that the exhibit shows that the sponsored ads achieved 199,411 "impressions", I am not satisfied that it supports Mr Su's description that "these advertising campaigns have reached a significant audience in the UK"; the 199,411 figure does not amount to sales made to UK customers, and I am not clear what conclusions may reliably be drawn, particularly as no detail is given of the nature or content of the advertising campaigns.

23. Exhibit SH4 is an undated screenshot showing that the opponent is ranked number 16 in the Amazon bestsellers list in relation to "beer brewing - filters, funnels and strainers".

24. The evidence filed by the opponent is clearly very thin. I remind myself that the opponent claimed use generating goodwill in respect of the following goods:

Strainers for household purposes; tea strainers; piping bags; pastry bags; decorating bags for confectioners; isothermic bags; tea bag rests; cooking mesh bags; cheesecloth bags for use in cooking; cooking mesh bags; linen cloth.

25. Elsewhere, the witness refers to the sale of "cloth items". However, it is clear that the evidence is confined to one single product, which is a polyester fine mesh bag for straining and brewing. From the list of goods in respect of which goodwill is claimed, there is only evidence relating to *cooking mesh bags*, which term appears twice in the list. There is no evidence of use of the sign in relation to "cheesecloth bags for use in

cooking” – though I acknowledge that the evidenced polyester fine mesh bag for straining and brewing is very similar to a cheesecloth bags for use in cooking.

26. I must therefore consider whether the evidence relating to that one single product is sufficiently clear to sustain a relevant goodwill in the UK at all. The mesh straining bags appear to have been made available for sale via Amazon.co.uk since May 2020, but the opponent gives no evidence of sales taking place before May 2022. Further it has not been made clear how many of the 2,240 sales were made prior to the relevant date to customers located in the UK. The screenshot of the Amazon listing in exhibit SH1 shows reviews from customers based in Australia, Canada and the USA so I am unable to determine what proportion of the opponent’s gross revenue of £41,120 pertains to UK customers before the relevant date. The only evidence I have of sales made prior to the relevant date to UK customers is 11 orders made between 1 May 2022 and 5 May 2022 which is a very limited time period. I have no evidence about the extent to which there have been repeat orders – which may have supported evidence of the attractive force bringing in custom.

27. The promotional activities made by the opponent also appear to be very limited, I do not consider an advertising expenditure of £1,012 between 1 April 2021 and 1 October 2024 to be particularly large and there is no further information provided about the nature of the opponent’s advertising campaigns.

28. As regards the contents of exhibit SH4 stating that the opponent is ranked 16<sup>th</sup> in relation to beer brewing filters, funnels and strainers, I remind myself that this evidence is undated and only in relation to sellers on Amazon and is therefore not a true reflection of the opponent’s position in the relevant market. I further note that no evidence or submissions have been provided to indicate the proportion of the size of the market.

29. I bear in mind that the law of passing off does not protect a goodwill of trivial extent.<sup>1</sup> In *Smart Planet Technologies, Inc. v Rajinda Sharma* (BL O/304/20), Mr Thomas Mitcheson QC, as the Appointed Person, reviewed the following authorities

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<sup>1</sup> *Hart v Relentless Records* [2002] EWHC 1984 (Ch)

about the establishment of goodwill for the purposes of passing-off: *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2015] UKSC 31, paragraph 52, *Reckitt & Colman Product v Borden* [1990] RPC 341, *HL and Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd* [1980] R.P.C. 31. After reviewing these authorities Mr Mitcheson concluded that:

“... a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon.”

30. Therefore, taking all of the above into account – the limited channel of trade, the limited product range, limited promotion, the unclear extent of UK sales as at the relevant date - I find that the opponent’s evidence falls short of proving the existence of any protectable level of goodwill in their business attached to the sign. As the opponent has failed to prove that it enjoys a more than trivial goodwill in its sign at the relevant date, the section 5(4)(a) ground fails.

31. Moreover, even if I am wrong to find that the evidence establishes no protectable goodwill at all, it would be my view that the Amazon sales, totalling around £40k in the years before the relevant date, of a polyester fine mesh bag for straining and brewing would not be sufficient to sustain a claim of passing off against the contested trade mark.

32. On the one hand, the sign is of course identical to the contested mark; and I have also acknowledged a strong similarity between the evidenced goods – a polyester straining bag – and “cheesecloth bags for use in cooking”. However, the opponent has shown no evidence in respect of its claimed goodwill for cheesecloth bags for use in cooking, and the contested goods are simply different types of fabrics. While the contested goods include “cheesecloth”, this is not equivalent to a cheesecloth bag for straining and brewing. Cheesecloth may be used for various purposes, including in clothing goods. It may at best be an element of a bag for straining, but it is not a straining bag product.

33. If the opponent has any protectable goodwill at all based on its sign, it is only very limited in strength and extent. The opponent's product is not made of cheesecloth. The opponent has provided no evidence or submissions as to the similarity of the goods. There is no evidence that the channels of trade for cheese cloth and brewing accessories are shared. Likewise, in relation to the applied-for "vinyl cloth". Certainly, there appears no similarity or market overlap in respect of the other applied-for fabrics. Similarity of goods is not a vital requirement for success under section 5(4)(a), but the closeness of the fields of activity is an important factor in considering whether deception or misrepresentation arises.

34. The word "natural" is of very low or no distinctive character for fabric goods. The word "era" is not an invented word of high distinctive character.

35. Taking account of all relevant factors – including strength and extent of goodwill, distance between the fields of activity, and distinctiveness of the sign - I therefore do not accept that use of the applied-for mark in respect of any of the cloth goods would be an actionable misrepresentation or give rise to any consequent injury.

## **CONCLUSION**

36. The opposition is unsuccessful, and the applicant's mark may proceed to registration for all of the goods applied for.

## **COSTS**

37. The applicant has been successful and would normally be entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023.

38. However, as the applicant is unrepresented, at the conclusion of the evidence rounds the tribunal wrote to the applicant and invited them to indicate whether they intended to make a request for an award of costs. The applicant was informed that, if so, they should complete a Pro Forma, providing details of their actual costs and accurate estimates of the amount of time spent on various activities associated with the proceedings. They were informed that "if the pro-forma is not completed and returned, costs, other than official fees arising from the action may not be awarded."

39. The applicant did not file a completed Pro Forma and paid no official fees. That being the case, I make no award of costs in this matter.

**Dated this 20<sup>th</sup> day of August 2025**

**Catrin Williams**

**For the Registrar,**

**The Comptroller-General**